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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,856	10/31/2003	Richard A. Smeed	3181.01US02	9336
24113	7590	03/20/2006	EXAMINER	
PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A. 4800 IDS CENTER 80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100			A, PHI DIEU TRAN	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/698,856	<b>Applicant(s)</b> SMEED ET AL.	
	<b>Examiner</b> Phi D. A	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 2-9 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 10-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/8/04</u> . | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

1. Applicant's election of claims 1, 10-16 in the reply filed on 3/10/06 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 16 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claim states that the horizontal element having the same resilient strands as the horizontal element, and the vertical element being disposed through an opening in the horizontal opening. This is not supported by the specification. The specification supports the vertical element having same resilient strands as the horizontal element. The specification, however, does not support the vertical elements extending through an opening of the horizontal element, and the elements having same resilient strands. As shown in figures 13-16, the vertical element extending through another horizontal member, not the horizontal element.

***The claim is examined as best understood.***

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 10-11, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Kim (5522599).

Kim shows an indicator (inherently could function as an indicator) comprising a base (21) defining a generally central opening and a supportive geometry with a bottom surface, at least a portion of the bottom surface being generally planar, a plurality of generally resilient strands (inherently resilient as it is made of wool, chemical fiber, optical fiber, and also the strands need to be resilient otherwise it will break when stroked by hand or foot), accommodated by the base opening in an operatively generally vertical orientation (the strands 18), the resilient strands returning to the generally vertical orientation when forced away therefrom by the substantially flowable material or by tools used to finish a surface of the flowable material (inherently capable of functioning as claimed), the indicator is conforming to a generally horizontal surface (the flat surface of groove 20'), a horizontal element (21), a vertical element (18) disposable generally transversely through an opening in the horizontal element and comprising a plurality of generally resilient strands, the horizontal element comprising an adhesive (22), the horizontal element is formed separately from the vertical element.

6. Claims 10, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Doyle (4133533).

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Doyle shows an indicator conforming to a generally horizontal surface (the surface which support part 10) comprising a horizontal element (figure 2, the part of elements 31, 33 which rest flat on part 32), a vertical element (4) disposable generally transversely through an opening (33) in a horizontal element and comprising a plurality of generally resilient strands, both the horizontal and vertical element comprising the plurality of substantially resilient strands.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (5522599) in view of Gross (5609121).

Kim shows all the claimed limitations except for the adhesive being a length of tape.

Gross discloses double-sided tape/adhesive strip ( col 3 line 33) mounting one surface to another.

It would have been obvious to one having ordinary skill in the art at the time of the invention modify Kim's adhesive to show the adhesive being a length of tape because a double-sided tape would provide for easy secure fastening of surfaces together as taught by Gross.

9. Claims 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (5522599) in view of Gross (5609121).

Kim shows all the claimed limitations except for the adhesive affixed to a base of the horizontal element.

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Gross discloses double-sided tape/adhesive strip ( col 3 line 33) affixed to a base of the horizontal element.

It would have been obvious to one having ordinary skill in the art at the time of the invention modify Kim's adhesive to show the adhesive affixed to a base of the horizontal element as taught by Gross because it would further secure the horizontal member to the underlying structure.

10. Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (5522599) in view of Gross (5609121).

Kim as modified shows all the claimed limitations except for a release layer disposed over the adhesive layer.

It would have been obvious to one having ordinary skill in the art at the time of the invention modify Kim's modified structure to show a release layer disposed over the adhesive layer because having a release layer over an adhesive layer would protect the adhesive from sticking to other structures until the time of use and is well known in the art of adhesive bonding.

### ***Conclusion***

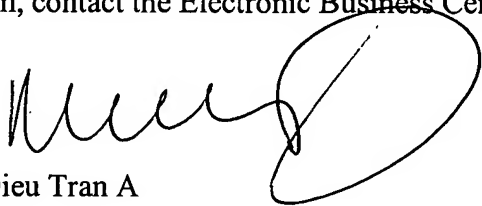
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different indicator device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, consisting of a series of loops and a large circular flourish at the end.

Phi Dieu Tran A

3/15/06